

IN THE U.S. DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA

JOHN A. PORTER,	)	CASE NO: 4:22-cv-4160
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
TONY REZAC and ARI FLEET CORE &	)	
MAIN d/b/a CORE & MAIN, LP,	)	
	)	
Defendants.	)	

COMES NOW the Plaintiff, and for his cause of action alleges that:

1. Plaintiff, John A. Porter, is a citizen of the State of Washington, residing at 701 South Newport Avenue in Newport, Pend Oreille County, Washington. Plaintiff is a long distance truck driver who owns his own truck and leases it through various truck brokers.

2. Defendant, Tony Rezac, is a truck driver who works for Core & Main, LP, located at 2808 East Highway 44, Rapid City, South Dakota. Tony Rezac is a resident of Rapid City, South Dakota and a citizen of South Dakota.

3. Defendant, ARI Fleet Core & Main d/b/a Core & Main, LP, is a limited partnership with its headquarters and principal place of business at 4001 Leadenhall Road, Mount Laurel, New Jersey. Core & Main is a citizen of New Jersey. This is a suit between citizens of different states in which the amount in controversy is more than \$75,000.00. The District Court has jurisdiction pursuant to 28 U.S. Code §1332.

4. Plaintiff was the owner of a 2004 Peterbilt truck tractor on January 17, 2020. Plaintiff was pulling a double-axle refrigerated cargo trailer loaded with apples bound for Western Provisions, Inc. at Sioux Falls, South Dakota. Plaintiff's truck was eastbound on Interstate 90 approaching the overpass near mile marker 183. The weather was overcast, it was misting and the temperature was hovering between 33 and 34 degrees Fahrenheit. Plaintiff was operating his vehicle at 40 miles per hour because he was anticipating that overpasses and culverts could be freezing at those temperatures.

5. As plaintiff's vehicle topped the overpass, defendants' truck and trailer came into view. The truck was a 2016 Ford F-550 towing a three-axle flatbed trailer. The rig had jackknifed just below the crest of the overpass and had come to a rest with the power unit headed

south and the trailer blocking both eastbound lanes. Plaintiff struck the rear of defendant's trailer, went into the median of I-90 and stopped.

6. The above described collision was proximately caused by the negligence of the Defendant's driver, Tony Rezac, in the following particulars:

- a. He was operating his vehicle at a high and dangerous speed too fast for the conditions of the traffic, weather and road conditions then prevailing;
- b. He failed to have and maintain his vehicle under reasonable control;
- c. He stopped and left his vehicle standing on the main travelled portion of the roadway when, in the exercise of reasonable care, he could have parked and left it standing on the shoulder; and
- d. He failed to take reasonable measures to warn eastbound traffic that the eastbound lanes of Interstate Highway 90 were blocked.

7. As a proximate result of the collision, Plaintiff suffered a wedge fracture of his third lumbar vertebrae, bruises, abrasions and shock. His Peterbilt, which had a fair and reasonable value of \$73,474.28 before the collision, could not be economically repaired and after the collision had no value except for salvage. It was sold for \$10,200.00 less \$4,057.65 for storage and teardown paid to Western Truck and Trailer, Sioux Falls, for a net salvage of \$6,142.35, which was a fair and reasonable price considering the damage to the unit and the circumstances. Plaintiff was damaged by the loss of a truck with a net value of \$67,331.93. Moreover, while plaintiff searched for a new truck, he rented a substitute truck, first from his broker at the rate of \$950.00 per week and then from Peterbilt for \$850.00 per week. Plaintiff necessarily incurred the fair and reasonable total sum of \$13,533.60 for the loss of use of the truck damaged in the accident. Plaintiff located a replacement truck at a dealership in Norfolk, Nebraska in February of 2020 and was compelled to expend the further sum of \$211.23 for temporary permits to drive the truck from Norfolk to Washington via Montana, Idaho, Washington and South Dakota. To arrange for disposition of his cargo and the removal of his old truck and trailer from the median, plaintiff reasonably and necessarily incurred \$10,176.07 in towing charges and \$589.05 for lodging. Plaintiff also expended \$2,363.75 removing a refrigerator and inverter from his wrecked truck and installing it in his new truck. Plaintiff needed cash to live on while seeing to the removal of the truck and trailer to Sioux Falls and incurred fees for advances from his broker of \$50.00. Plaintiff's 2017 Great Dane trailer was repaired after the collision at a cost of \$6,099.57. In addition, it cost \$798.85 to tow the trailer

plus \$1,773.22 for storage and additional towing. Plaintiff's cargo of apples was slightly damaged, resulting in a cargo loss of \$35.00.

8. Plaintiff's back was sore and painful during the time he spent tending to the above described details. Plaintiff went to his doctor when he got back to Newport and reasonably and necessarily incurred \$3,455.60 in medical expenses to diagnose and treat his back injury.

9. Plaintiff continues to have back pain and wears a back brace which partially relieves it. Plaintiff has been advised that the vibrations, bumps and jars of his occupation contribute to the back pain and that it will gradually worsen as he ages. Plaintiff suffers from pain, the apprehension of pain and mental and physical suffering and will continue to do so permanently. Plaintiff's injury is permanent and will require medical treatment, medication and prosthetics to treat it or palliate it in the future.

WHEREFORE, Plaintiff prays the Court for judgment in the amount of \$97,711.23 special damages and such general damages as a jury may award.

JOHN A. PORTER, Plaintiff.

By: Mark D. Fitzgerald.

One of His Attorneys

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**JURY TRIAL REQUEST**

Plaintiff requests a jury trial at Sioux Falls, South Dakota.

JS 44 (Rev. 04/21)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JOHN A. PORTER

(b) County of Residence of First Listed Plaintiff Pend Oreille County, W  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mark D. Fitzgerald  
1002 Riverside Blvd., Ste 200  
P.O. Box 1407**DEFENDANTS**

TONY REZAC and ARI FLEET CORE &amp; MAIN d/b/a CORE &amp; MAIN, LP

County of Residence of First Listed Defendant Pennington County, SD  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FORFEITURE/PENALTY	LABOR	IMMIGRATION	BANKRUPTCY	INTELLECTUAL PROPERTY RIGHTS	SOCIAL SECURITY	FEDERAL TAX SUITS	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S. Code §1332Brief description of cause:  
Motor vehicle collision**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

97,711.23 plus general

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

Nov 16, 2022

SIGNATURE OF ATTORNEY OF RECORD

Mark D. Fitzgerald

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE